

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: _____

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Air Rights Lease Agreement with Gallatin Partners, LLC

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Lease Agreement between the City of Huntsville and Gallatin Partners, LLC, for Fountain Row Air Space and Rights.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to execute a Lease Agreement by and between the City of Huntsville and Gallatin Partners, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Agreement between the City of Huntsville and Gallatin Partners, LLC," consisting of seven (7) pages including Exhibit "A", and the date of August 28, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 28th day of August, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 28th day of August, 2014.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
MADISON COUNTY) **LEASE AGREEMENT BETWEEN THE CITY OF
HUNTSVILLE AND GALLATIN PARTERS, LLC
FOR FOUNTAIN ROW AIR SPACE AND RIGHTS**

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the 28th day of August, 2014, by and between the CITY OF HUNTSVILLE, a municipal corporation within the State of Alabama, as Lessor (the "Lessor"), and GALLATIN PARTNERS, LLC, an Alabama limited liability company (the "Lessee").

WITNESSETH:

FOR AND IN CONSIDERATION of (a) the Rent herein reserved and to be paid to Lessor by Lessee, (b) the herein contained demise, lease, and rent of the Leased Premises by Lessor to Lessee, (c) the mutual agreements, covenants and terms of this Lease, (d) the execution, acknowledgment and delivery of this Lease by Lessor and by Lessee and (e) other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly acknowledged by Lessor and Lessee, and intending to be legally bound hereby, Lessor and Lessee agree and covenant with and unto each other, as follows:

1. **Demise:** Lessor hereby demises, leases and rents unto Lessee, its successors and assigns, as Lessee, for itself and its successors and assigns, hereby leases and rents from Lessor, subject to the restrictions and limitations regarding use thereof as provided in Section 2, below, the following-described real property situated, lying and being in the City of Huntsville, County of Madison, State of Alabama, to-wit:

Real property described in Exhibit "A" attached hereto and, by this reference, incorporated herein and made a part hereof, and denominated as the "Leased Premises"

TO HAVE AND TO HOLD unto Lessee, its successors and assigns, the Leased Premises upon the agreements, covenants and terms set forth herein.

2. **Use of Leased Premises:** Lessee shall use the Leased Premises solely for the purpose of construction, operation, use, maintenance, repair and replacement of an elevated pedestrian walkway (the "Facility") connecting the buildings located at 655 Gallatin Street and 515 Fountain Row for (a) the conveyance of persons and goods; (b) communications installations; (c) pneumatic transfer tubes; (d) utility installations, pipes and wiring; and (e) other uses consistent with the activities and operations of office buildings and of Lessee, together with any appurtenances, equipment, facilities and systems necessary to carry out any of the foregoing permitted purposes (collectively referred to herein as the "airspace facility" or "facility"). In no event shall Lessee use the Leased Premises for any other purpose, including, but not limited to, the installation, erection, or display of any sign or advertisement. Lessee shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulation connection with its lease and use of the Leased Premises. Lessee shall not use the Leased Premises for an illegal purpose or violate any statute, regulation, rule, or order of any government body nor create or allow to exist any nuisance or trespass nor do any act on or about the Leased Premises or bring anything onto or into the Leased Premises which will in any way increase the rate of insurance on the Leased Premises nor damage or deface the Leased Premises.

3. **Term:** The term of this Lease is for fifty (50) years commencing at 8:00 a.m. CST on the 1st day of September, 2014, and ending at 7:59 a.m. CST on the 31st day of August, 2064.

4. **Rent:** For the initial year, the Lessee shall pay as rent for the Leased Premises the sum of Two Hundred Dollars (\$200.00). For each additional year of the lease, the annual rental amount of the preceding year shall escalate by three percent (3%) to determine the rent for the upcoming year. Such

rental amount shall be payable in advance on or before September 1st of each year of the lease term. If Lessee fails to pay the said rental amount on or before September 5th of any year of the lease term, Lessee shall pay Lessor, in addition to the rental amount, a late fee of Twenty-five Dollars (\$25.00). If Lessee fails to pay the said rental amount and any applicable late fees by September 10th of any year of the lease term, then Lessee shall be in default. Lessee shall have thirty (30) days to cure the said default by payment in full of all past due rent and late fees. If Lessee fails to cure the default within thirty (30) days, then Lessor may terminate this lease and require Lessee to remove the Facility. If Lessee fails to remove the Facility within sixty (60) days of demand by Lessor, then Lessor may remove the Facility, and Lessee shall be liable to Lessor for the cost of removal. Failure by the Lessor to exercise the option to terminate in any default period does not constitute a waiver of Lessor's right to terminate in the event of a future, uncured default.

5. Location, Character and Extent: Construction of the Facility may not commence unless and until Lessee obtains location, character and extent approval from the Huntsville Planning Commission.

6. Approval of Air Space Usage: Prior to commencement of construction of the Facility, Lessee shall obtain written approval from Huntsville Hospital that the Facility will not interfere with the use of Huntsville Hospital's helicopter pad. Lessee shall provide Lessor a copy of the said written notice upon receipt.

7. Facility Shall Not Unduly Interfere with Traffic Flow: The Facility shall be constructed so as to maintain a minimum of 17.0 feet vertical clearance for traffic on Fountain Row. Lessee shall submit the plans and specifications for the Facility to the City Engineer for approval regarding vertical clearance and other traffic issues. Lessee shall coordinate with the City of Huntsville Traffic Engineer to minimize disruption of traffic during the construction of the Facility.

8. Destruction of Facility: If at any time during the term of this Lease the Facility is destroyed or damaged in whole or in part by fire, or other casualty, lessee, at its sole cost and expense, shall promptly cause the same to be substantially restored to their prior existing condition. If Lessee fails to restore the said Facility within sixty (60) days, then Lessor, at its option, may (i) terminate this Lease and have no further obligation to Lessee or (ii) complete the said restoration and bill the Lessee for the cost.

9. Disclaimer of Liability and Indemnification: Lessor shall not at any time be liable to Lessee or to any other person or entity for any loss, injury, death or damage regardless of the cause. Lessee, to the fullest extent permitted by law, shall defend, indemnify and hold harmless Lessor, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from Lessee's use of the Leased Premises. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

10. Insurance: Lessee shall maintain Commercial General Liability on the Facility written on an "occurrence form" for bodily injury and property damage with a \$2,000,000.00 general aggregate limit and a limit of \$1,000,000.00 per occurrence. The City of Huntsville, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of the construction and use of the Facility and/or Leased Premises by Lessee. Additional insured status shall be through ISO Additional Endorsement CG 20 11 01 96 or equivalent that is sufficient to provide the coverage required by this Agreement.

Lessee's insurance coverage shall be primary insurance as respects the City of Huntsville, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear as respects: liability arising out of the construction and use of the Facility and/or Leased Premises by

Lessee. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Lessee's insurance and shall not contribute to it.

11. Notices: All notices or demands hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail return receipt requested, to the following addresses:

If to Lessor, to: Office of the City Attorney
for the City of Huntsville, Alabama
Attention: City Attorney
308 Fountain Circle
Huntsville, AL 35801

If to Lessee, to: Gallatin Partners, LLC
401 Franklin Street
Huntsville, AL 35801

12. Legal Authority: Lessor covenants, represents and warrants with and unto Lessee, its successors and assigns, that (i) Lessor has all necessary authority and power to enter into this Lease and to lease the Leased Premises, (ii) this Lease has been duly authorized and approved by Lessor in accordance with applicable law as evidenced by Ordinance No. 14-_____ of the City Council of the City of Huntsville, Alabama, and (iii) the Leased Premises are surplus and not needed for public or municipal purposes. Lessee represents that it has all necessary authority and power to enter into this Lease.

13. Access to Facility: The proposed airspace facility shall be designed and constructed in a manner which will permit access to the facility for the purpose of inspection, maintenance and reconstruction when necessary.

14. Abandonment or Nonuse, Termination: In the event of (a) Lessee's abandonment of the Leased Premises, or (b) Lessee's non-use of the Leased Premises for the facility for a period of in excess of twelve (12) consecutive months, Lessor shall have the right to terminate this Lease. Upon termination of this Lease by Lessor due to Lessee's abandonment or specified period of non-use of the Leased Premises, Lessee shall remove the facility completely from the Leased Premises at Lessee's sole expense. If Lessee fails to so remove the facility from the Leased Premises within a reasonable period of time following such termination due to abandonment or specified period of nonuse, Lessor may cause the facility to be removed from the Leased Premises and bill the costs of such removal to Lessee.

15. Ownership of Buildings: Lessee represents that it is the owner of the buildings located at 655 Gallatin Street and at 515 Fountain Row (collectively, the "Buildings") and that Lessee shall own the Facility. Lessee shall provide proof of ownership of the Buildings to Lessor prior to commencement of construction of the Facility. Lessee agrees that for the term of this Lease, the Buildings and the Facility shall have common ownership and shall not be sold or conveyed other than as a combined unit, unless Lessee shall have first obtained the prior written consent of the Huntsville City Counsel, in its sole discretion.

16. Maintenance by Lessee: The Facility will be maintained so as to assure that the structures and the area within the public right-of-way boundaries will be kept in good condition, both as to safety and appearance (including but not limited to the prompt removal of any and all graffiti), and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with use of the public right-of-way. Such maintenance includes, but is not necessarily limited to, keeping the Leased Premises and the Facility clean and presentable and free of any litter, rubbish, debris, and other waste, and making repairs or replacements that are necessary in order to keep the Facility safe, presentable and structurally sound. In the event Lessee fails to perform its maintenance obligations, and such failure

continues for thirty (30) days following written notice thereof or, if such failure is not capable of being cured within thirty (30) days, Lessee's failure to commence curative action within thirty (30) days after notice thereof and pursue the same with reasonable dispatch until completion, then Lessor shall have the right to enter the Leased Premises to perform, or have performed, such work, and bill the Lessee and Lessee shall promptly reimburse Lessor for the costs and/or expenses so incurred.

17. Recordation: Lessee may, at its cost and expense, cause the original of this Lease to be filed for record, recorded, and indexed under Lessor's and Lessee's names in the real estate records in the Office of the Judge of Probate of Madison County, Alabama.

18. Assignment and Subletting: Lessee shall not, by operation of law or otherwise, assign this Lease in whole or part, or sublet the Leased Premises, without the prior consent of Lessor's City Council in each instance, except in connection with the sale of the buildings for which the facility provides service, or in connection with the merger, reorganization or reincorporation of Lessee.

19. Electrical Power and Other Necessary Utilities: Lessee shall be responsible for obtaining and maintaining any utility service to the Leased Premises that it desires.

20. General Provisions: This Lease, along with all exhibits and attachments or other documents affixed hereto or referred to herein (including, without limitation, the legal description of the Leased Premises), embodies the entire agreement, intent and understanding of Lessor and Lessee as to the transaction contemplated and evidenced hereby and merges herein all prior and contemporaneous agreements, covenants, discussions, representations, statements and understandings heretofore made between Lessor and Lessee as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Lessor and Lessee as to such transaction not contained herein are and shall be null and void, unenforceable and of no force and effect. Neither this Lease nor any covenant, provision or term hereof, shall be amended, changed or modified in any respect, nor may any novation or waiver regarding the same be effectuated, without Lessor and Lessee first executing a writing, in equal dignity to this Lease, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver. This Lease and all of its covenants, provisions and terms, are to be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning by and under the laws of the United States of America and of the State of Alabama. As this Lease has been drafted jointly by Lessor and Lessee, after extensive consultation with their respective counsel, no presumption against the draftsmen of this Lease shall be indulged in the construction and/or interpretation hereof. Lessor's and Lessee's respective successors and assigns shall be fully bound by this Lease and each and every covenant, provision and term hereof just as they are bound. Each and every covenant, provision and term of this Lease inures, and shall inure, to the benefit of Lessor and Lessee and their respective successors and assigns.

(remainder of page intentionally blank – signature page to follow)

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed by their respective duly authorized officers as of the 28th day of August, 2014.

ATTEST:

THE CITY OF HUNTSVILLE, ALABAMA
a municipal corporation within the
State of Alabama, Lessor

By: _____
Charles E. Hagood
Clerk-Treasurer

By: _____
Tommy M. Battle, Jr.
Mayor

WITNESS:

GALLATIN PARTNERS, LLC, an Alabama limited
liability company, Lessee

By: _____
Michael R. Patterson
Its Manager

THIS INSTRUMENT WAS PREPARED BY: DANIEL M. WILSON, OF MAYNARD, COOPER & GALE, P.C., 655 GALLATIN STREET, HUNTSVILLE, ALABAMA 35801, TELEPHONE NUMBER: (256) 551-0171.

I

STATE OF ALABAMA)

COUNTY OF MADISON)

I, Belinda Sons, a Notary Public in and for said County in said State, hereby certify that Thomas M. Battle, Jr. and Charles E. Hagood, whose names as Mayor and Clerk-Treasurer, respectively, of the City of Huntsville, a municipal corporation within the State of Alabama, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Huntsville, a municipal corporation within the State of Alabama, as of the day the same bears date.

GIVEN under my hand and official seal on this the 28th day August, 2014.

Notary Public
State of Alabama
County of Madison [SEAL]

My Commission Expires:

STATE OF ALABAMA)

COUNTY OF MADISON)

I, _____ a Notary Public in and for said County in said State, hereby certify that Michael R. Patterson, whose name as Manager of Gallatin Partners, LLC, an Alabama limited liability company, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, as of the day the same bears date.

GIVEN under my hand and official seal on this the _____ day of _____, 2014.

Notary Public
State of Alabama
County of Madison [SEAL]

My Commission Expires:

EXHIBIT "A"

**DESCRIPTION OF AREA FOR USE
OF AIR RIGHTS
FOUNTAIN ROW
HUNTSVILLE, ALABAMA**

**STATE OF ALABAMA
COUNTY OF MADISON**

"Air Space and Rights"

All air space and rights located within that certain area(a) The lower plane exterior boundary of which is described as an elevation of 641.0 feet, and the upper horizontal plane exterior boundary of which is described as an elevation of 660.0, both above mean sea level, and(b) the vertical plane exterior boundaries of which are described as the vertical planes extended upward from the surface of the ground of the external boundaries of the following described tract or parcel of real property:

All that part of Section 1, Township 4 South, Range 1 West, Madison County, Alabama and more particularly described as:

Commencing at the southwest corner of Lot 1 of the Quigley Map Combine Lot 7 and Lot 8 Block 233 on the easterly right-of-way line of Fountain Row; thence N31°24'49"W, along the easterly right-of-way line of Fountain Row, a distance of 21.62 feet to the point of beginning; thence S18°00'54"W, a distance of 62.14 feet to the westerly right-of-way line of Fountain Row; thence N32°05'48"W along the westerly right-of-way line of Fountain Row, a distance of 11.24 feet; thence N18°00'54"E, a distance of 62.32 feet to the easterly right-of-way line of Fountain Row; thence S31°24'49"E along the easterly right-of-way line of Fountain Row, a distance of 11.35 feet to the point of beginning.

Containing 0.012 acres (536.7 sq. ft.), more or less.

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 8/28/2014

Department Contact: Tommy Battle

Phone # 427-5000

Contract or Agreement: Lease Agreement for Air Rights

Document Name: Lease Agreement between the City and Gallatin Partners

City Obligation Amount: 0

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		